

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES ELLIS, SR.,

Plaintiff,

v.

KERN COUNTY SHERIFF
DEPARTMENT, et al.,

Defendants.

No. 1:22cv-01209-JLT-SAB (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF COUNSEL,
WITHOUT PREJUDICE

(ECF No. 31)

Plaintiff is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's motion for appointment of counsel, filed September 25, 2023. Plaintiff seeks appointment of counsel because he is incarcerated in a county jail and is unable to do research.

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

1 Without a reasonable method of securing and compensating counsel, the court will seek
2 volunteer counsel only in the most serious and exceptional cases. In determining whether
3 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
4 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
5 complexity of the legal issues involved.” *Id.* (internal quotation marks and citations omitted).

6 In the present case, the Court does not find the required exceptional circumstances. Even
7 if it assumed that Plaintiff is not well versed in the law and that he has made serious allegations
8 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with
9 similar cases almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to
10 his pro se status and his incarceration, the test is not whether Plaintiff would benefit from the
11 appointment of counsel. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most
12 actions require development of further facts during litigation and a pro se litigant will seldom be
13 in a position to investigate easily the facts necessary to support the case.”) The test is whether
14 exception circumstances exist and here, they do not. At this early stage of the proceedings, the
15 Court cannot determine that Plaintiff is likely to succeed on the merits and the Court finds that
16 Plaintiff had adequately litigated this action to date. Accordingly, Plaintiff’s motion for the
17 appointment of counsel is denied, without prejudice.

18 IT IS SO ORDERED.

19 Dated: September 26, 2023

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21 UNITED STATES MAGISTRATE JUDGE
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